

1 A bill to be entitled
2 An act relating to liens; amending s. 255.05,
3 F.S.; including unpaid finance charges due
4 under a claimant's contract among charges which
5 may be assessed against certain contractors'
6 bonds; revising language with respect to the
7 timeframe for notice of intent to look to such
8 a bond for recovery; providing for the time
9 period for notice of nonpayment; providing
10 forms for waiver of rights to claim against the
11 bond for progress payments and final payments;
12 amending s. 713.06, F.S.; providing for service
13 of notice of commencement rather than mailing
14 with respect to liens of persons not in
15 privity; amending s. 713.132, F.S.; providing
16 that a notice of termination is effective under
17 certain circumstances; amending s. 713.135,
18 F.S.; providing that certain applicants for a
19 building permit must file certain information
20 with respect to the notice of commencement;
21 providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Paragraph (a) of subsection (1) and
26 subsection (2) of section 255.05, Florida Statutes, are
27 amended to read:

28 255.05 Bond of contractor constructing public
29 buildings; form; action by materialmen.--

30 (1)(a) Any person entering into a formal contract with
31 the state or any county, city, or political subdivision

1 thereof, or other public authority, for the construction of a
2 public building, for the prosecution and completion of a
3 public work, or for repairs upon a public building or public
4 work shall be required, before commencing the work, to
5 execute, deliver to the public owner, and record in the public
6 records of the county where the improvement is located, a
7 payment and performance bond with a surety insurer authorized
8 to do business in this state as surety. The bond must state
9 the name and principal business address of both the principal
10 and the surety and must contain a description of the project
11 sufficient to identify it. Such bond shall be conditioned that
12 the contractor perform the contract in the time and manner
13 prescribed in the contract and promptly make payments to all
14 persons defined in s. 713.01 whose claims derive directly or
15 indirectly from the prosecution of the work provided for in
16 the contract. Any claimant may apply to the governmental
17 entity having charge of the work for copies of the contract
18 and bond and shall thereupon be furnished with a certified
19 copy of the contract and bond. The claimant shall have a right
20 of action against the contractor and surety for the amount due
21 him or her, including unpaid finance charges due under the
22 claimant's contract. Such action shall not involve the public
23 authority in any expense. When such work is done for the
24 state and the contract is for \$100,000 or less, no payment and
25 performance bond shall be required. At the discretion of the
26 official or board awarding such contract when such work is
27 done for any county, city, political subdivision, or public
28 authority, any person entering into such a contract which is
29 for \$200,000 or less may be exempted from executing the
30 payment and performance bond. When such work is done for the
31 state, the director of the Department of Management Services

1 may delegate to state agencies the authority to exempt any
2 person entering into such a contract amounting to more than
3 \$100,000 but less than \$200,000 from executing the payment and
4 performance bond. In the event such exemption is granted, the
5 officer or officials shall not be personally liable to persons
6 suffering loss because of granting such exemption. The
7 Department of Management Services shall maintain information
8 on the number of requests by state agencies for delegation of
9 authority to waive the bond requirements by agency and project
10 number and whether any request for delegation was denied and
11 the justification for the denial.

12 (2)(a) A claimant, except a laborer, who is not in
13 privity with the contractor shall, before commencing or not
14 later than 45 days after commencing ~~within 45 days after~~
15 ~~beginning~~ to furnish labor, materials, or supplies for the
16 prosecution of the work, furnish the contractor with a notice
17 that he or she intends to look to the bond for protection. A
18 claimant who is not in privity with the contractor and who has
19 not received payment for his or her labor, materials, or
20 supplies shall, ~~within 90 days after performance of the labor~~
21 ~~or after complete delivery of the materials or supplies or,~~
22 ~~with respect to rental equipment, within 90 days after the~~
23 ~~date that the rental equipment was last on the job site~~
24 ~~available for use,~~ deliver to the contractor and to the surety
25 written notice of the performance of the labor or delivery of
26 the materials or supplies and of the nonpayment. The notice of
27 nonpayment may be served at any time during the progress of
28 the work or thereafter but not before labor, services or
29 materials have been furnished and not before the payment due
30 date in the claimant's contract or invoice, if the invoice
31 serves as the claimant's contract, and not later than 90 days

1 after the final furnishing of the labor, services, or
2 materials by the claimant or, with respect to rental
3 equipment, not later than 90 days after the date that the
4 rental equipment was last on the job site available for use.

5 No action for the labor, materials, or supplies may be
6 instituted against the contractor or the surety unless both
7 notices have been given. No action shall be instituted
8 against the contractor or the surety on the payment bond or
9 the payment provisions of a combined payment and performance
10 bond after 1 year from the performance of the labor or
11 completion of delivery of the materials or supplies. A
12 claimant may not waive in advance his or her right to bring an
13 action under the bond against the surety. In any action
14 brought to enforce a claim against a payment bond under this
15 section, the prevailing party is entitled to recover a
16 reasonable fee for the services of his or her attorney for
17 trial and appeal or for arbitration, in an amount to be
18 determined by the court, which fee must be taxed as part of
19 the prevailing party's costs, as allowed in equitable actions.

20 (b) When a person is required to execute a waiver of
21 his or her right to make a claim against the payment bond in
22 exchange for, or to induce payment of, a progress payment, the
23 waiver may be in substantially the following form:

24 WAIVER OF RIGHT TO CLAIM

25 AGAINST THE PAYMENT BOND (PROGRESS PAYMENT)

26 The undersigned, in consideration of the sum of \$....,
27 hereby waives its right to claim against the payment bond for
28 labor, services, or materials furnished through ...(insert
29 date)... to ...(insert the name of your customer)... on the
30 job of ...(insert the name of the owner)..., for improvements
31 to the following described project:

1 Section 2. Paragraphs (b) and (d) of subsection (2) of
2 section 713.06, Florida Statutes, 1996 Supplement, are amended
3 to read:

4 713.06 Liens of persons not in privity; proper
5 payments.--

6 (2)

7 (b) If the owner, in his notice of commencement, has
8 designated a person in addition to himself to receive a copy
9 of such lienor's notice, as provided in s. 713.13(1)(b), the
10 lienor shall serve mail a copy of his notice on to the person
11 so designated. The failure by the lienor to serve mail such
12 copy, however, does not invalidate an otherwise valid lien.

13 (d) A notice to an owner served on a lender must be in
14 writing, must be served in accordance with s. 713.18, and
15 shall be addressed and delivered to the lender by certified
16 mail, return receipt requested, to the persons designated, if
17 any, and to the place and address designated in the notice of
18 commencement. Any lender who, after receiving a notice
19 provided under this subsection, pays a contractor on behalf of
20 the owner for an improvement shall make proper payments as
21 provided in paragraph (3)(c) as to each such notice received
22 by the lender. The failure of a lender to comply with this
23 paragraph renders the lender liable to the owner for all
24 damages sustained by the owner as a result of that failure.
25 This paragraph does not give any person other than an owner a
26 claim or right of action against a lender for the failure of
27 the lender to comply with this paragraph. Further, this
28 paragraph does not prohibit a lender from disbursing
29 construction funds at any time directly to the owner, in which
30 event the lender has no obligation to make proper payments
31 under this paragraph.

1 Section 3. Subsection (4) of section 713.132, Florida
2 Statutes, is amended to read:

3 713.132 Notice of termination.--

4 (4) A notice of termination is effective to terminate
5 the notice of commencement at the later of 30 days after
6 recording of the notice of termination or the date stated in
7 the notice of termination as the date on which the notice of
8 commencement is terminated, provided that the notice of
9 termination has been served pursuant to subsection (1)(f) on
10 the contractor and on each lienor who has given notice.

11 Section 4. Paragraph (d) of subsection (1) of section
12 713.135, Florida Statutes, 1996 Supplement, is amended to
13 read:

14 713.135 Notice of commencement and applicability of
15 lien.--

16 (1) When any person applies for a building permit, the
17 authority issuing such permit shall:

18 (d) Furnish to the applicant two or more copies of a
19 form of notice of commencement conforming with s. 713.13. If
20 the direct contract is greater than \$2,500, the applicant
21 shall file with the issuing authority prior to the first
22 inspection either a certified copy of the recorded notice of
23 commencement or a notarized statement that the notice of
24 commencement has been filed for recording, along with a copy
25 thereof. In the absence of the filing of a certified copy of
26 the recorded notice of commencement, the issuing authority
27 shall not perform or approve subsequent inspections until the
28 applicant files by mail, facsimile, hand delivery, or any
29 other means such certified copy with the issuing authority.
30 Nothing herein shall be interpreted as requiring or
31 encouraging the recording of a notice of commencement prior to

1 the issuance of a building permit. If a local government
2 requires a separate permit or inspection for installation of
3 temporary electrical service or other temporary utility
4 service, land clearing, or other preliminary site work, such
5 permits may be issued and such inspections may be conducted
6 without providing the issuing authority with a certified copy
7 of a recorded notice of commencement or a notarized statement
8 regarding a recorded notice of commencement.

9 Section 5. This act shall take effect October 1, 1997.

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